1750 K Street NW Suite 600 Washington, DC 20006

Mark J. O'Connor oconnor@l-olaw.com

Tel 202/887-6230 Fax 202/887-6231

January 23, 2004

Ms. Marlene Dortch, Secretary Federal Communications Commission The Portals, TW-A325 445 12th Street, SW Washington, D.C. 20554

Re: Ex Parte Presentation – Review of the Section 251 Unbundling Obligations of

Incumbent Local Exchange Carriers; CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

On January 22, 2004, Dave Baker, Vice President, Law and Policy for EarthLink, Inc. had a telephone conversation with Jessica Rosenworcel, Legal Advisor to Commissioner Copps, and discussed the issues raised in EarthLink's October 2nd Petition for Reconsideration of the line sharing portion of the FCC's Report and Order and Order on Remand released August 21, 2003 ("*R&O*") and previously filed positions in the above-referenced dockets. EarthLink stated its position that the Commission can and should reconsider the line sharing portion of the *R&O* separate from other possible reconsideration items and that it should do so before the DC Circuit rules in the pending judicial appeal of the *R&O*. Such an approach on reconsideration, with a reinstatement of the line sharing UNE, would strengthen the FCC's position on judicial review.

Pursuant to the Commission's rules, one copy of this memorandum is being filed electronically in each of the above-referenced dockets for inclusion in the public record. Please do not hesitate to call me if you have any questions.

Respectfully submitted,

/s/ Mark J. O'Connor Counsel for EarthLink, Inc.